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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of:

Bell Atlantic 1997 TRP Revisions

Pacific Bell 1997 TRP Revisions

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CC Docket No. 93-193

Phase I, Part 2

CC Docket No. 94-65

MCI COMMENTS

I. Introduction

MCI Telecommunications Corporation (MCI) hereby submits its comments on the tariff review plan (TRP) revisions filed by Bell Atlantic and Pacific Bell in the above-captioned docket. In the Memorandum Opinion and Order (Order), the Commission concludes that Bell Atlantic improperly allocated sharing amounts among the price cap baskets in the 1993, 1994, 1995, and 1996 annual access filings, while Pacific Bell improperly allocated sharing amounts among the price cap baskets in the 1994, 1995, and 1996 annual access filings.¹ The Commission also concludes that Bell Atlantic improperly calculated the "g" factor used in its 1993, 1994, 1995, and 1996 annual access filings.²

¹Order at ¶39.

²Order at ¶30.

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In Section V of the Order, the Commission directs the LECs that have violated the Commission's rules and decisions to apply two remedial actions. First, the Commission requires the LECs to correct their PCIs and other pricing limits on a going-forward basis so that the PCIs are what would have been in place had they been calculated consistent with the Commission's rules and decisions.³ To account for the fact that each year's PCIs depend on previous PCIs, the Order requires the LECs to first recalculate the PCIs in effect on July 1, 1993. The LECs are then required to use the recalculated July 1, 1993, PCIs to recalculate the PCIs in effect on January 1, 1994, and to repeat this process at six-month intervals. The recalculated June 30, 1997 PCIs are to be used to determine the PCIs that will become effective on July 1, 1997.

Second, the Commission sets forth a refund mechanism for LECs to compensate customers for overcharges.⁴ The Commission concludes that the LECs overcharged their customers if any API that was in effect exceeded the PCI that would have been in effect had it been computed pursuant to the Commission's rules and orders, or any service category SBI or subcategory SBI exceeded its corrected upper limit, or any CCL rate exceeded the corrected maximum CCL rate. If the rates that were in effect exceeded the applicable recalculated cap, the LEC is required to refund the above-cap service category or basket revenue with interest. The refund is to be implemented through an exogenous cost change effective July 1, 1997, and removed on July 1, 1998.

³Order at ¶¶97-103.

⁴Order at ¶¶104-105.

Bell Atlantic and Pacific Bell have failed to calculate their refund liability using the methodology prescribed in the Order. As a result, the PCIs shown in Bell Atlantic and Pacific Bell's amended 1997 annual access filing TRPs are inflated. The Commission should require Bell Atlantic and Pacific Bell to calculate their refund liability using the methodology prescribed in the Order,⁵ and to reflect the correct refund amount in a further revision of their 1997 annual access filing TRPs.

II. Bell Atlantic's Refund Amount is Understated

The PCIs that Bell Atlantic has recalculated for July 1, 1993, and six-month intervals thereafter have not been computed in the manner required by the Order. Bell Atlantic's recalculated PCIs reflect only the correction of the "g" factor, not the correction of the misallocation of sharing.⁶ The Order requires the LECs to recalculate the July 1, 1993, PCIs and subsequent PCIs "as required by the decisions in this Order."⁷ The reference to the "decisions in this Order" clearly encompasses not only the Order's finding that Bell Atlantic misstated the g factor, but also the Order's finding that Bell Atlantic misallocated sharing.

⁵The LECs should, however, proceed directly from Step 2 to Step 4 of the refund calculation prescribed in Para. 105. Adjustment for revenue changes between the base year and 1997 is unnecessary because the refund liability should be based on the actual amount of overcharges, calculated in Step 3, plus interest, as calculated in Steps 4 and 5.

⁶Letter from Maureen Keenan, Bell Atlantic, to William F. Caton, FCC, May 8, 1997 (Bell Atlantic Letter), Appendix B, Figure 5.

⁷Order at ¶97.

Furthermore, the Order requires Bell Atlantic, as one of the remedial actions that it is to take to remedy the misallocation of sharing, "to implement refunds in accordance with the directions in Section V of this Order."⁸ In Section V of the Order, the Commission concludes that a LEC incurs a refund liability whenever the API that was in effect exceeds the PCI that would have been in effect had it been calculated pursuant to the Commission's rules.⁹ Accordingly, in order to comply with the Order's instruction that it calculate refunds resulting from the misallocation of sharing in accordance with the directions of Section V, Bell Atlantic must first recalculate its 1993-1997 PCIs using the correct sharing amounts.

Because the PCIs used in Bell Atlantic's refund calculations reflect only the correction of the g factor, and do not reflect the corrected sharing amounts, Bell Atlantic's calculation of its refund liability is incorrect. Correcting for the exclusion of EUCL revenues allocates more sharing to the common line basket. This generally results in lower common line PCIs, and higher traffic sensitive, trunking, and interexchange PCIs. For example, the corrected common line basket PCI for the 1994 annual access filing should be substantially lower than the figure Bell Atlantic has shown on Workpaper B-2, Line 9. Bell Atlantic has therefore understated its refund liability for common line basket overcharges in the 1994-95 tariff year.

⁸Order at ¶39.

⁹Order at ¶104.

III. Bell Atlantic's Rule Violations May Not Be Remedied Through a "Trueup"

As noted above, Bell Atlantic has failed to reflect the correct sharing amounts in the PCIs used to calculate its refund liability. Instead, Bell Atlantic is proposing to treat its correction of the misallocation of sharing much like an ordinary trueup of prior years' sharing. For the 1993-1996 annual access filings, Bell Atlantic has calculated the difference between the sharing that should have been allocated to each basket and the sharing that was actually allocated to each basket.¹⁰ Bell Atlantic has then treated the sharing difference, with interest, as an exogenous cost change to its 1997 annual access filing PCIs. Using this methodology, Bell Atlantic has proposed an exogenous cost decrease of \$40.9 million in the common line basket, but exogenous cost increases of \$15.3 million in the traffic sensitive basket, \$28.6 million in the trunking basket, and \$3.1 million in the interexchange basket.¹¹

Bell Atlantic appears to argue that refunds are not required to correct the misallocation of sharing, stating that the Order "sets forth a methodology only to implement refunds."¹² Bell Atlantic claims that, instead of refunds, the "mandated reallocation here must include a reduction in the index for one basket, but an increase in the indices for other baskets."¹³ It then justifies its use of a methodology not permitted by

¹⁰See, e.g., Bell Atlantic Letter, Appendix B, Workpaper S-2, Line 9.

¹¹Bell Atlantic Letter, Appendix B, Workpaper S.

¹²Bell Atlantic Letter at 3, n.3.

¹³Id.

the Order on the grounds that “[t]he Order is silent on the methodology for implementation” of the revisions Bell Atlantic believes are necessary.¹⁴

Bell Atlantic’s claim that the Order’s refund mechanism does not address appropriately the misallocation of sharing is without foundation. Pursuant to Section 204(a), the Commission has the authority to terminate an accounting order by requiring refunds of amounts collected pursuant to tariff provisions found to be unlawful. In a price cap environment, for example, the Commission can require refunds of charges above the properly-calculated price cap. However, nothing in Section 204(a) authorizes the trueup mechanism that Bell Atlantic proposes.

Bell Atlantic is arguing that the Commission should permit it to correct for its past underallocation of sharing to the traffic-sensitive, trunking, and interexchange baskets by increasing its 1997-98 PCIs. In other words, Bell Atlantic is seeking to charge higher traffic sensitive, trunking, and interexchange rates in 1997-98 in order to recover revenues lost because it did not calculate its 1993-96 PCIs pursuant to the Commission’s rules and orders. Bell Atlantic’s proposed methodology should be rejected because it constitutes retroactive ratemaking. The Commission has consistently found that LECs may not retroactively increase rates in order to eliminate or reduce refund liabilities. In the 800 Data Base Reconsideration Order the Commission rejected assertions by certain LECs that refunds could be offset by headroom in other baskets.¹⁵ The Commission also

¹⁴Id.

¹⁵In the Matter of 800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order on Reconsideration, CC Docket No. 93-129, released April 14, 1997,

explained that efforts to recoup monies that could have been earned by retroactively increasing rates have been consistently rejected as retroactive ratemaking.¹⁶ Accordingly, Bell Atlantic may not increase 1997-98 traffic sensitive, trunking, and interexchange PCIs to recoup revenues lost because it misallocated sharing amounts. It is, however, required to refund any overcharges to its customers.

Bell Atlantic's "trueup" methodology is not sanctioned by the Commission's price cap rules and orders. The Commission permits adjustments to prior years' sharing only when required by revisions to the LEC's Form 492A; if the revised rate of return differs from the preliminary rate of return, the LEC is permitted to "true up" its sharing amount. Nothing in the Commission's price cap rules or orders provides for trueups as an outcome of a Section 204(a) tariff investigation.

IV. Pacific Bell's Revised TRP Should Be Rejected

While Pacific Bell has recalculated its PCIs to reflect the use of EUCL revenues in allocating sharing amounts, it has failed to calculate its refund liability correctly. Much like Bell Atlantic, it is proposing to offset refunds due for overcharges in one basket with retroactive rate increases in other baskets. After calculating the revised PCIs, Pacific has calculated what it describes as an "adjustment to sharing" to be applied as an

at ¶17 (800 Data Base Reconsideration Order).

¹⁶Id. at n.44.

exogenous cost change to its 1997-98 indices.¹⁷ If an API is above the revised PCI, Pacific has claimed an exogenous cost reduction for 1997-98. If, on the other hand, the revised PCI is above the original PCI, Pacific Bell has proposed an exogenous cost increase for 1997-98. For example, it proposes an exogenous cost increase of \$9.1 million plus interest because its original July 1, 1995, traffic sensitive PCI was below the revised PCI.¹⁸

In total, Pacific Bell is proposing an exogenous cost increases of \$15.8 million in the traffic sensitive basket and \$19.2 million in the trunking basket.¹⁹ As noted above, the Commission has recently stated that retroactively increasing rates in certain baskets would constitute retroactive ratemaking.²⁰ For this reason, the Commission should require Pacific Bell to recalculate its refund liability and refile its revised 1997 TRP.

Respectfully submitted,
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May 19, 1997

¹⁷Letter from Al Swan, Pacific Bell, to William F. Caton, FCC, May 8, 1977 (Pacific Bell Letter). See, e.g., Workpaper IV-B, col. (i).

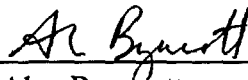
¹⁸Id., Workpaper IV-B, col. (i), line 5.

¹⁹Id., Workpaper V-B, Workpaper V-C.

²⁰800 Data Base Reconsideration Order at n.44.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on May 19, 1997.

A handwritten signature in cursive script, appearing to read "Alan Buzacott", is written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that copies of the foregoing "MCI Comments" were sent via first class mail, postage paid, to the following on this 19th day of May, 1997.


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